

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1866 - SB 1935

March 6, 2020

SUMMARY OF ORIGINAL BILL: Increases, from 30 days to 45 days, the time period by which a covered entity or pharmacy benefit manger (PBM) has to disclose any material change to a contract provision that affects the terms of reimbursement, the process for verifying benefits and eligibility, the dispute resolution procedure, the procedure for verifying drugs included in the formulary, and the procedure for contract termination to a pharmacy or pharmacist in its network.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014664): Deletes all language after the enacting clause. Requires, if coverage of a prescription drug for the treatment of any medical condition is restricted for use by an insurer, health plan, or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner to have access to a clear, readily accessible, and convenient process to request a step therapy exception. Requires an insurer, health plan, or utilization review organization to grant a step therapy exception within 72-hours of receipt or within 24-hours of receipt in an emergency medical condition, if certain criteria are met. The proposed legislation takes effect January 1, 2021 and applies to agreements for health insurance or health plans entered into, amended, or renewed on or after that date.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures - \$6,716,700/FY20-21
\$13,433,400/FY21-22 and Subsequent Years

Increase Federal Expenditures - \$12,548,800/FY20-21
\$25,097,600/FY21-22 and Subsequent Years

Increase Local Expenditures – Exceeds \$1,100/FY20-21*
Exceeds \$2,100/FY21-22 and Subsequent Years*

Assumptions for the bill as amended:

- Step therapy is the process of trying less expensive medications before stepping up to drugs that cost more.
- The proposed legislation requires health insurers to base step therapy protocols on appropriate clinical practice guidelines or published peer reviewed data developed by independent experts with knowledge of the condition or conditions under consideration instead of cost.
- It defines “medically necessary” as healthcare services and supplies that, under the applicable stand of care, are appropriate to improve or preserve health, life, or bodily function; to slow the deterioration of health, life or bodily function; or for the early screening, prevention, evaluation, diagnosis, or treatment of a disease, condition, illness, or injury.

Division of TennCare

- The current definition of medically necessary for the TennCare program pursuant to Tenn. Code Ann. § 71-5-144(b)(3) requires the least costly alternative course of diagnosis or treatment that is adequate for the medical condition of the enrollee to be used.
- The Division of TennCare (TennCare), will deny approximately 181,853 claims based on prior authorization denials on inpatient and physician administered medications in calendar year 2020 with a cost of \$245,247,158.
- The new protocols will likely result in a 15 percent decrease in prior authorization denials for TennCare’s pharmacy benefits manager (PBM). The recurring increase in expenditures for the PBM is estimated to be \$36,787,074 ($\$245,247,158 \times 15.0\%$).
- TennCare’s annual cost of claims denied by the managed care organizations (MCOs) is estimated to be \$8,400,000. Assuming 15 percent in prior authorization denials, the recurring increase in expenditures for the MCOs is estimated to be \$1,260,000 ($\$8,400,000 \times 15.0\%$).
- The total increase in expenditures for TennCare is estimated to be \$38,047,074 ($\$36,787,074 + \$1,260,000$).
- Medicaid expenditures receive matching funds at a rate of 65.878 percent federal funds to 34.122 percent state funds. Of this amount, \$12,982,423 ($\$38,047,074 \times 34.122\%$) will be in state funds in FY21-22 and subsequent years and \$25,064,651 ($\$38,047,074 \times 65.878\%$) will be in federal funds in FY21-22 and subsequent years.
- Due to the January 1, 2021 effective date, the increase in state expenditures is estimated to be \$6,491,212 ($\$12,982,423 \times 50.0\%$) in FY20-21 and the increase in federal expenditures is estimated to be \$12,532,326 ($\$25,064,651 \times 50.0\%$) in FY20-21.

Division of Benefits Administration

- Based on information provided by the Division of Benefits Administration’s medical carrier and PBM, it is estimated there will be an increase in state expenditures of \$336,333 for the State Plan, \$114,626 for the Local Education Plan in FY21-22 and subsequent years. Due to the January 1, 2021 effective date, the increase in state

expenditures is estimated to be \$168,167 ($\$336,333 \times 50.0\%$) in FY20-21 for the State Plan and \$57,313 ($\$114,626 \times 50.0\%$) in FY20-21 for the Local Education Plan.

- Some state plan member's insurance premiums are funded through federal dollars. The increase in federal expenditures in FY21-22 and subsequent years is estimated to be \$32,980. Due to the January 1, 2021 effective date, the increase in federal expenditures is estimated to be \$16,490 ($\$32,980 \times 50.0\%$).
- The state does not contribute to the Local Government Plan; any increase in premiums will be entirely absorbed by the participating agencies and their members.
- It is estimated the Local Government Plan would be responsible for a mandatory increase in local expenditures estimated to be \$2,107 in FY21-22 and subsequent years. Due to the January 1, 2021 effective date, the increase in local expenditures is estimated to be \$1,054 ($\$2,107 \times 50.0\%$) in FY20-21.
- The impact on local governments that do not opt into the Local Government Plan is unknown; therefore, the total increase in local expenditures is estimated to exceed \$2,107 in FY21-22 and subsequent years and exceed \$1,054 in FY20-21.

Department of Commerce and Insurance

- The Department of Commerce and Insurance can promulgate rules utilizing existing resources; therefore, any fiscal impact is estimated to be not significant.

Total Fiscal Impacts

- The total increase in state expenditures in FY20-21 is estimated to be \$6,716,692 ($\$6,491,212 + \$168,167 + \$57,313$).
- The total increase in federal expenditures in FY20-21 is estimated to be \$12,548,816 ($\$12,532,326 + \$16,490$).
- The total increase in local expenditures in FY20-21 is estimated to exceed \$1,054.
- The total increase in state expenditures in FY21-22 and subsequent years is estimated to be \$13,433,382 ($\$12,982,423 + \$336,333 + \$114,626$).
- The total increase in federal expenditures in FY21-22 and subsequent years is estimated to be \$25,097,631 ($\$25,064,651 + \$32,980$).
- The total increase in local expenditures in FY21-22 and subsequent years is estimated to exceed \$2,107.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Increase Business Revenue –

Exceeds \$19,266,600/FY20-21

Exceeds \$38,533,100/FY21-22 and Subsequent Years

Increase Business Expenditures –

Less than \$19,266,600/FY20-21

Less than \$38,533,100/FY21-22 and Subsequent Years

Assumptions for the bill as amended:

- Healthcare providers will experience an increase in business revenue for providing services.
- The increase in business revenue is estimated to exceed \$19,266,562 (\$6,716,692 + \$12,548,816 + \$1,054) in FY20-21 and exceed \$38,533,120 (\$13,433,382 + \$25,097,631 + \$2,107) in FY21-22 and subsequent years.
- For companies to retain solvency, any increased expenditures will be less than the amount of increased revenues collected. Therefore, the increase in business expenditures is estimated to be less than \$19,266,562 in FY20-21 and less than \$38,533,120 in FY21-22 and subsequent years.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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